

EXECUTIVE SECRETARIAT

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Executive Secretary
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Executive Registry

83-2624

OFFICE OF FEDERAL
PROCUREMENT POLICY

MAY 6 1983

POLICY LETTER NO. 83-1

TO THE HEADS OF EXECUTIVE AGENCIES AND DEPARTMENTS

SUBJECT: Withholding of Funds from Construction Contract
Progress Payments

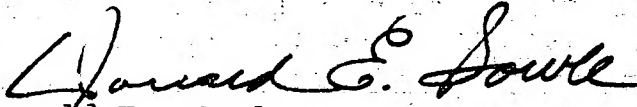
1. Purpose. This Policy Letter is intended to provide uniform policy guidance regarding the retention or withholding of funds from progress payments made under Federal construction contracts.
2. Background. Most construction contracts provide for monthly progress payments to be made to contractors. The progress payments are based on the contracting officer's estimate of the work completed by the contractor and the value of delivered materials. The general provisions for Federal construction contracts, Standard Form 23A, previously required contracting officers to withhold 10% from progress payments made to a contractor prior to the contractor's completion of 50% of the contract work. This requirement for mandatory withholding has, however, been superseded (see CFR 1-16.401(h)). Present practice, as reflected in the Federal Procurement Regulations (1-7.602-7) and the Defense Acquisition Regulation (7-602.7), is that in making progress payments on construction contracts: (1) 10% of the estimated amount shall be retained until final completion and acceptance of the contract work; and (2) if the contracting officer finds that satisfactory progress is achieved during any period for which a progress payment is to be made, the payment may be made in full without retention of a percentage. These regulations are subject to varying interpretations. Some agencies routinely withhold a percentage of each progress payment. Others, such as the Department of Defense, have recently stated that retainage will not be used as "a routine administrative practice."
3. Policy. Retainage should not be used as a substitute for good contract management, and contracting officers should not withhold funds without cause. Determinations regarding the use of retainage and the specific levels to

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be withheld shall be made by contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The level of retainage withheld, if any, should not exceed ten percent of the amount billed by a contractor in accordance with the contract terms and may be adjusted as contracts approach completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

4. Responsibilities. This policy shall be implemented through the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulations (FPR). Appropriate changes shall be made to these regulations to accommodate the policy. Agencies that do not use the DAR and FPR shall make appropriate procurement regulatory changes to implement the policy.
5. Applicability. This policy is applicable to Federal contracts. It is not applicable to Federal grants.
6. Information Contact. Information about this policy may be obtained by contacting Charles W. Clark, Office of Federal Procurement Policy, (202) 395-3254.
7. Effective Date. This policy is to be effective 60 days after issuance.


Donald E. Sowle
Administrator

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